

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CECIL L. WIDGEON,	§	
	§	No. 394, 2004
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. I.D. No. 0401015628A
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 26, 2005

Decided: March 7, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 7th day of March, 2005, on consideration of the briefs of the parties, it appears to the Court that:

1) Cecil L. Widgeon appeals from his conviction, following a jury trial, of two counts of offensive touching, one count of endangering the welfare of a child, and one count of assault in the third degree. Widgeon argues that the trial court erred by not *sua sponte* declaring a mistrial after the complaining witness mentioned a prior bad act.

2) In 2003, Widgeon was living with his girlfriend, Viletta Newcomb, at her home in Laurel, Delaware. The relationship ended late in the year, but Widgeon

continued to stay with Newcomb and her 11 year old daughter, Miya, whenever he had no place else to sleep. In January, 2004, at about the same time that Newcomb had told Widgeon he had to find his own place, the two got into an argument. After an exchange of words, Widgeon threw a vase and several chairs at Newcomb. She ran to a neighbor's house for help, but no one answered the door.

3) When Newcomb returned to her house, she realized that she had been stabbed in the right shoulder, the back of her neck, and on her hand. Newcomb did not recall how she received those wounds, and she admitted that she did not see Widgeon with a knife in his hand. Widgeon testified that Miya was the one with a knife and that Miya was standing behind her mother during the altercation.

4) During the State's examination of Newcomb, the prosecutor asked her how she felt when Widgeon touched her face during the argument. Newcomb responded that she was scared because Widgeon had beaten her several times before that night. Widgeon objected. The trial court struck the reference to prior beatings and instructed the jury to disregard the testimony. On appeal, Widgeon contends that the trial court should have declared a mistrial. He argues that it was a close case, as evidenced by the fact that he was acquitted on the more serious charges. Since it was a close case, he says, the only way to cure the prejudicial effect of Newcomb's statement would be to order a new trial.

5) Because Widgeon never asked the trial court to declare a mistrial, we review its failure to do so *sua sponte* for plain error, which is error “so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”¹ Generally, a curative instruction is sufficient to remedy any prejudice that may result from an inappropriate comment such as this one.² Here, the fact that the jury acquitted Widgeon on some of the charges indicates that Newcomb’s statement did not prejudice him. Thus, we find no error, plain or otherwise.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

By the Court:

/s/ Carolyn Berger
Justice

¹Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986).

² Fuller v. State, 860 A.2d 324 (Del. 2004).